I have not overlooked the provisions of section 23 of that Enactment which reads as follows:—

> "If doubt shall arise as to the mode of operation of this Enactment or the manner in which the provisions thereof are to be construed or carried into effect or otherwise in relation thereto, the same may be referred through the Resident to the State Council who shall decide the same and such decision shall be final and shall not be questioned or revised by any Court."

That gives the State Council an entirely arbitrary and unrestricted power to interpret this Enactment. Such interpretation is in reality amendment of the Enactment. It must, of course, be given effect to as legislation but its meaning and effect are to be interpreted in the Courts according to the established rules of construction.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J.

October 17, 1939.

KUAN CHOON HIN v. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 51 of 1939]

Penal Code, S. 304A—causing death by a rash act —high degree of negligence—necessity of proof of.

The appellant was driving his car on the main road into Klang. When approaching the junction of the main road and the road leading to the Klang Amusement Park, a Chinese boy ran diagonally across the main road. The appellant who was at that time on the left side of the road, swerved to avoid him but failed to do so, and knocked the boy down, at the edge of the grass on the right hand side of the road. The appellant was unable to stop his car at the spot where he knocked the boy down, and about eight or ten yards further on knocked down the boy's father who was wheeling a bicycle, on the edge of the right hand side of the road. The appellant was also unable to stop his car after the second accident until he had proceeded about 15 or 20 yards, and he finally pulled his car up on the left hand side of the road. Both the boy and his father died the same day from the injuries they had received.

Held, that the evidence proved that high degree of negligence it is necessary to prove before an accused person can properly be convicted under Section 304A of the Penal Code.

Cases referred to:—

(1) *Andrews v. Director of Public Prosecutions,* (1937) A.C. 576.

(2) *Cheow Keok v. Public Prosecutor,* 9 M.L.J. 103.

MAGISTRATE'S CRIMINAL APPEAL.

Hastings for the Appellant.

Grattan-Bellew, Deputy Public Prosecutor, for the Public Prosecutor.

Poyser, C.J.—The appellant was convicted on two charges under section 304A of the Penal Code. On the first charge he was sentenced to a fine of $500/- or in default 3 months R.I., on the second charge to 3 months R.I. His driving licence was also suspended for one year.

There was very little dispute as to the facts, and the only question that arose on appeal was, whether the evidence proved that high degree of negligence it is necessary to prove before an accused person can properly be convicted—under the above section.

The facts briefly are as follows. The appellant was driving his car, an Austin 12 Saloon, on the main road into Klang; when approaching the junction of the main road and the road leading to the Klang Amusement Park, a Chinese boy ran diagonally across the main road. The appellant who was at that time on the left side of the road, swerved to avoid him, but failed to do so, and knocked the boy down, at the edge of the grass on the right hand side of the board.

The appellant was unable to stop his car at the spot where he knocked the boy down, and about eight or ten yards further on knocked down the boy's father who was wheeling a bicycle, on the edge of the right hand side of the road. The appellant was also unable to stop his car after this second accident until he had proceeded about 15 or 20 yards, and he finally pulled his car up on the left hand side of the road. Both the boy and his father died the same day from the injuries they received.

Mr. Hastings, who appeared for the appellant, conceded that the appellant was guilty of a grievous error of judgment, but urged that the conviction could not be supported having regard to the case of *Chow Keok v. Public Prosecutor,*(2) a recent decision of the F.M.S. Court of Appeal, which decided that to establish a charge under section 304A of the Penal Code, it was necessary to prove the same high degree of negligence that must be proved, before an accused person can properly be convicted in England on an indictment for manslaughter by negligence.

In my opinion the evidence did establish that high degree of negligence. There appears to be no doubt that the appellant was driving at a grossly excessive speed, having regard to the fact that he was travelling along a road which, according to the police evidence, was usually crowded. The excessive speed at which the appellant was driving was clearly proved by the

brake marks which are depicted in the photographs and the plan P7. It is clear from this evidence that the appellant's car travelled for at least 120 feet after he had applied his brakes. Further, the dent in the off front wing of the appellant's car (as shewn on the photograph P6.) indicates that there was a violent impact with the bicycle.

There was a variance in the evidence of the two eye witnesses of these accidents. Th witness Lim Kim Kuey stated that the appellant after hitting the boy's father stopped immediately, the other eye-witness Tan Boo Hwa stated that the car proceeded about 25 yards after knocking the man down.

The evidence of the brake marks, however, clearly prove that the version of the latter witness was correct.

For the above reasons the evidence as a whole established that the appellant was driving recklessly (see *Andrews v. Director of Public Prosecutions,*[2] and the Magistrate rightly convicted him.

With regard to the sentences imposed, the Magistrate was lenient, but it cannot be said that he was unduly so, and I was not asked by the Deputy Public Prosecutor to enhance these sentences.

The appeal is dismissed. The sentence of 3 months imprisonment imposed on the second charge will date from the hearing of the appeal, viz. the 13th of October. If the fine imposed on the first charge is not paid, the term of imprisonment in default will run from the expiry of the sentence on the second charge.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

RAJA MUSA, Ag. J.

August 18, 1939.

LEE FUNG v. PUBLIC PROSECUTOR.

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 9 of 1939]

Penal Code, S. 304A—causing death by a rash act —high degree of negligence—necessity of proof of.

The appellant while driving his lorry and after rounding a bend in the road along which he was travelling knocked down and killed a cyclist who was coming from the opposite direction and carrying on his carrier a sack of padi weighing approximately 48 catties. The appellant was convicted by the Magistrate at Kuala Pilah under section 304A of the Penal Code. It was proved (1) that the appellant rounded the bend on his right edge and therefore the wrong side of the road (2) that before he rounded the bend his view beyond the bend was obstructed by a hillock in front and he did not see what was happening beyond it (3) that on coming to the apex of the bend he suddenly saw the deceased on his bicycle about 10 feet in front of the lorry and (4) that he swerved a little to his left and at the same time applied his brakes but as the deceased was very close to the lorry he could not avoid hitting the deceased.

Held, on the facts as outlined above, that the appellant was guilty of that high degree of negligence necessary to support a charge under Section 304A of the Penal Code and that the conviction must be affirmed.

Case referred to:—

(1) *Cheow Keok v. Public Prosecutor,* 9 M.L.J. 103.

MAGISTRATE'S CRIMINAL APPEAL.

Jeff for the Appellant.

Majoribanks, Deputy Public Prosecutor, for Public Prosecutor.

Raja Musa, Ag. J.—The facts in this case are briefly these:—

> The appellant while driving his lorry N.S. 4707 and after rounding a bend in the road knocked down and killed the deceased who was coming from the opposite direction on a bicycle and who was carrying on his carrier a sack of padi weighing approximately 48 catties.

The appellant was convicted by the learned Magistrate at Kuala Pilah on the 4th April, 1939, under section 304A of the Penal Code and under Rule 56 of the Motor Vehicles (Construction and Use) Rules 1937. He was sentenced to 3 months' rigorous imprisonment on the charge under section 304A and to a fine of $15/- or 1 week's rigorous imprisonment on the charge under the rule.

Against those convictions and sentences he now appeals.

The hearing of the appeal was delayed pending the result of Selangor Criminal Appeal to the Court of Appeal No. 1 of 1939—*The Public Prosecutor vs. Cheow Keok*[1] which raised the question as to the degree of negligence required for a conviction under section 304A of the Penal Code.

The decision of the Court of Appeal has now been pronounced and I am bound by its ruling to the effect that a very high degree of negligence must be proved before an accused person can properly be convicted under the section.

This ruling merely contains a general proposition of law and each case must still be decided on its own particular facts.